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JUN 21 2006

OFFICE OF PETITIONS

In re Application of :
Boaz et al. : DECISION ON APPLICATION
Application No. 10/004,413 : FOR
Filed: December 6, 2001 : PATENT TERM ADJUSTMENT
Attorney Docket No. 011927-113100 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed May 19, 2006. Applicants request that the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) be corrected from one hundred nine (109) days to nine hundred five (905) days.

The application for patent term adjustment is **GRANTED to the extent indicated herein.**

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **eight hundred thirty-six (836) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On February 21, 2006, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicants were advised that the patent term adjustment to date is 109 days. In response, applicants timely¹ filed the instant request for reconsideration of the patent term adjustment along with payment of the fee set forth in 37 C.F.R. § 1.18(e). Applicants request that the patent term

¹ PALM Records indicate that the Issue Fee payment was received on May 19, 2006.

adjustment be corrected to 905 days. Applicants assert that the Office's delay pursuant to 37 C.F.R. § 1.703(a)(2) should be calculated as 905 days, not 140 days.

The application history has been reviewed and it has been determined that the initial patent term adjustment of 109 days is incorrect. The Office mailed the Notice of Allowance and Fees Due an Office action under section 151 on February 25, 2004 four months and 69 days after the date of filing of applicant's reply, August 18, 2003. However, the Notice was not mailed to the correspondence address of record. The record supports a conclusion that this was due to an error on the part of the Office in mailing the Notice of Allowance and Fees Due to applicants. Accordingly, a corrected Notice of Allowance restarting the period for reply (and re-mailing the notice) was mailed on February 21, 2006.

Thus, the Office's delay should be calculated using February 21, 2006. Therefore, the period of delay is 796 days. However, petitioner is not entitled to 905 days adjustment. The 109 days adjustment originally provided included 69 days for the Office's delay pursuant to 37 C.F.R. § 1.703 (a)(2) in mailing the Notice of Allowance on February 25, 2004, four months and 69 days after the date of filing of applicant's reply, August 18, 2003. Since the Office's delay is properly calculated from February 21, 2006, the 69 days is encompassed in the 796 days. The 796 days in addition to the 71 days of Office delay for mailing the first Office action 14 months and 71 days after the application filing date totals 867 days of Office delay.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is eight hundred thirty-six days (836) days (867) days of PTO delay, reduced by (31) days of Applicants delay.

Submission of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

The address on the petition differs from the correspondence address of record. While a courtesy copy of this decision is being mailed to the person signing the present petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

The Publishing Division has been advised of this decision. The application is, thereby, being forwarded to the Publishing Division for issuance of the patent.

Telephone inquiries regarding this matter should be directed to the Petitions Attorney Charlema Grant at (571) 272-3215.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a long horizontal stroke extending to the right.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of updated PAIR screen

CC: Jeffrey A. Lindeman
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